

Reconsideration of the objections and rejections of pending Claims 1-19 for reissue is requested for the reasons indicated below.

The reissue declaration has been indicated by the Examiner to be "defective" under Rule 175(a)(5), in that it is alleged to fail to show "how" the claimed pheromones were liquid but recited in the claims as solid. In conjunction therewith, the Examiner rejected Claims 1-19 under 35 USC 251 as being based on a "defective" reissue.

Applicants fail to see wherein the declaration is "defective". The Examiner's attention is specifically directed to Page 6 of the reissue declaration, in the third full paragraph, for an explanation of the details of "how" the claimed pheromones were recited in the claims as solid.

There is nothing in the file wrapper of US Patent 4855127 to indicate that applicants ever intended to claim a "solid pheromone". That particular description of the pheromone as a "solid" arose, as explained in the declaration, from a change made by Examiner Ore.

Thus, Examiner Ore's EXAMINER INTERVIEW SUMMARY RECORD which is Paper No. 13 in the file wrapper of US 4855127, indicates only that --- "solid has been inserted in cl.1, line 6 after "a". ---. The Examiner Ore's RECORD does not provide details on "how".

Since Examiner Ore in the original application is apparently the same Examiner Ore in the present application for reissue, perhaps Examiner Ore would care to explain to applicants "how" the change arose or occurred.

Applicants would in turn be more than cooperative in submitting a Supplemental Reissue Declaration containing those details, if the Examiner deemed that a Supplemental Declaration is necessary. Otherwise, the declaration as originally filed in this application for reissue is considered more than adequate on the details, and contains all of the facts to which applicants are privy, as evidenced by the record in the file wrapper of the original application. The Examiner is therefore requested to reconsider this objection and rejection of the claims, and to withdraw both the objection and the rejection.

Claims 1-19 were further rejected by the Examiner under Section 112 as being indefinite, confusing, and based on a disclosure alleged to be "insufficient". The Examiner notes the confusion as being that "the claims recite solid pheromone", whereas the declaration indicates that only liquid pheromones are supported.

The only claims that require a "solid" pheromone are original Claim 1, and Claim 18 which was submitted in a Preliminary Amendment dated April 29, 1993, filed concurrently with the application. However, both claims have now been amended to cancel the term "solid". It is hoped that this minor change to Claims 1 and 18 is adequate to avoid the "confusion" noted by the Examiner. Otherwise, the Examiner is requested to suggest to applicants how the claims can be amended so as not to be confusing to the Examiner.

The alleged insufficiency in the disclosure is explained by the Examiner to be that applicants did not indicate in the specification support for only liquid pheromones. Applicants fail to see wherein this limitation or omission renders the disclosure insufficient.

For example, as pointed out in Column 9 line 3, both "water insoluble liquids or solid" pheromones are clearly taught and supported in the original disclosure. That amount of information is considered a sufficient disclosure to teach those of ordinary skill how to make and how to use the invention as claimed. Further, that amount of information adequately guides the art worker to determine, without undue experimentation, the particular pheromones which possess the disclosed utility.

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In the present case, the claimed genus of pheromone does not represent a diverse, unpredictable, or poorly understood category of material, and so the required level of disclosure is commensurate with the pheromone material as claimed, and enables one of ordinary skill to make and use the invention as recited in Claims 1-19 without undue experimentation.

In view of the above, the Examiner is respectfully requested to withdraw the objections and rejections in the application and pass the case to issue.

Respectfully submitted,  
DOW CORNING CORPORATION

A handwritten signature in cursive script, appearing to read "Jim L. De Cesare".

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